here. It suffices to recall that the "Wonderful Century," as Alfred Russel Wallace named it, left us with such a linking up with the whole world by telegraphs, telephones, liners, railways, æroplanes, credit systems, tourist systems, etc., in which Great Britain played a prominent part as inventor and developer, that the islanders are ceasing to think in insular terms, and relations with all the world have become the every-day facts of life and business and external and imperial politics.

Again, that the five nations included in the London-Paris-Berlin triangle, with Brussels at the center, should have entertained no less than eighty-nine international congresses last year, marks the rapidity of the growth of a world life. These congresses are both peace in the concrete and peace in thought and expression of thought. A great gathering of the medical men and women of the world meeting in London last August gives, through its president, emphatic expression of its desire for peace; the co-operators of the world meet in Glasgow the next month, and do the same in half a dozen European languages, and this is repeated at one big gathering after another.

The regularly organized peace movement has felt the strong influence of this growing sentiment and these growing factors in the life of the country. Three years ago the National Peace Council represented twenty organizations. It now represents forty. Moreover, many new and powerful bodies are being formed, such as the Friends' Northern Peace Board, the West Riding Peace Federation, the Jewish Peace Society, and the Norman Angell Leagues in such centers as Manchester, Glasgow, Newcastle, Leeds, and Cambridge. Thus a strong force for peace is being built up, and the immediate prospect is a good one.

Action taken by the National Peace Council during 1911-13 on two important questions, viz: Anglo-German relations and armaments, in circularizing the chambers of commerce, shows in the results in both cases that the problem of peace is becoming more and more vital to business men. As the German Ambassador said at Bradford on January 16 last, "There are no stronger supporters of good and friendly relations with all their neighbors than business men."

But although the outlook is indeed one to encourage the workers, it would be foolish to underrate the forces opposing.

The immense possibilities which the trade in armaments offer have been seized upon by keen traders in Great Britain, and many millions of capital have been sunk in a dozen powerful syndicates for armament manufacture. This industry is one of the greatest of the dangers we have to face, for its interests ramify through the whole of society. Not merely are the rich classes dependent for some of the best paying shares in the market on the thriving of this trade, but an ever-increasing army of workers in Newcastle, on the Clyde, in Birmingham, Sheffield, and elsewhere look to the building of battleships, to gun-making, armor-plate manufacture, projectiles, explosives, rifles, etc., for their daily bread.

And all this increasing manufacture of weapons of war creates its corresponding product of fear. We have two marines to every German one, and spend two dollars on our navy to every one spent by Germany on hers; yet our people have been sedulously taught to fear a German invasion. We have a million men throughout the Empire learning the trade of the soldier, yet the demand for conscription is vehemently put forward by our generals and ex-proconsuls. Statesmen and the press, seeking popularity, feed the "patriotic" flame, and the common people are half persuaded, and often fully persuaded, of the need for more and ever more arms and armaments. We have to meet these two well-entrenched opposing forces—financial interests and irrational fear.

One other difficulty may be touched upon—the astonishing want of general knowledge of international politics. Even members of Parliament so lack the "international mind" that they are often helplessly in the hands of astute political leaders. And this creates difficulties in the progress of such questions as the abolition of the right of naval capture, the preparation for the Third Hague Conference, and foreign policy generally.

But the trend of the world's forces is with the pacifists. Organized labor in England is solidly on the side of peace; the business world, the chambers of commerce, the commercial men, are determined for peace; the brotherhoods, the co-operators, the more liberal Christian churches, the teachers, are all for peace. No responsible body in England dare more than excuse war. Even our soldiers proclaim themselves the guardians of peace. The world order advances swiftly, and I believe that the progress made both has been and will be more and more rapid with each succeeding new year.

The Sanction of International Public Opinion.*

By Hon. William Dudley Foulke.

How far has public opinion an international existence?

Public opinion is more immediately definite and effective in smaller units than in larger ones. It can make itself felt in the tribe, the school, the village, more quickly and perhaps more powerfully than in a great nation, and international public opinion, or world opinion, is not yet as strong as national public opinion. It is confined to fewer objects; it is of later origin and more rudimentary. We cannot doubt that it exists among the more enlightened nations; yet it is none too strong even here. While the mutual jealousies of the powers were enough to induce them to intervene and protect the Turks in Constantinople from the advance of the Bulgarians, yet the public opinion of Europe was not strong enough to induce these powers, or any of them, to lift a hand to stay the slaughter among the Balkan peoples in the war that broke out after the peace with Turkey, and which today counts among its victims many scores of thousands of human beings. It may be strong enough, however, to induce the most highly developed nations not wantonly to break the clear terms of a solemn treaty, and perhaps strong enough to prevent a nation which has voluntarily submitted a case to arbitration from repudiating a decree of the arbitrators, if the decision be reasonably just and no very vital interest be affected. Nations might well look with contempt upon a litigant who

* From an address delivered before the meeting of the American Society for the Judicial Settlement of International Disputes, held in Washington, D. C., December 6, 1913.

would "squeal" if a court of its own choosing should decide against it.

Lord Chancellor Haldane, in his admirable address to the American Bar Association at Montreal, after treating of those usages which control individuals without the sanction of law and which are sufficient in daily life to secure observance of a general standard of conduct without resort to force, asks, "Can nations form a group or community among themselves within which a habit of looking to common ideals may grow up sufficiently strong to develop a general will to make the binding power of these ideals a reliable sanction for their obligations to each other?" and, after showing that there is nothing in the nature of nationality to preclude such a possibility, he thus continues: "Habits of mind which can be sufficiently strong with a single people can hardly be as strong between nations. There does not exist the same extent of common interest, of common purpose, and of common tradition, and yet the tendency, even as between nations that stand in no special relation to each other, to develop such a habit of mind is in our time becoming recognizable. There are signs that the best people in the best nations are ceasing to wish to live in a world of mere claims and to proclaim on every occasion, "Our country, right or wrong." There is growing up a disposition to believe that it is good, not only for all men, but for all nations, to consider their neighbor's point of view as well as their own. There is apparent at least a tendency to seek for a higher standard of ideals in international relations. The barbarism which once looked to conquest and the waging of successful war as the main object of statesmanship seems as though it were passing away. There have been established rules of international law which already govern the conduct of war itself, and are generally observed as binding by all civilized people, with the result that the cruelties of war have been lessened. If practice falls short of theory, at least there is today little effective challenge of the broad principle that a nation has, as regards its neighbors, duties as well as rights. It is this spirit that may develop as time goes on into a full international "Sittlichkeit."

But such development is certainly still easier and more hopeful in the case of nations with some special relation than it is within a mere aggregate of nations, and Lord Haldane urges its special application to England and America. This indicates that our belief in the compelling power of public opinion is rather a hope for the future than a belief that such a power exists today, except within a very narrow range. And that brings me to the next question:

How strong is international public opinion likely to become hereafter?

If it be inadequate today to enforce the decrees of an international court, except within a very narrow range of subjects and a limited number of nationalities, will it not grow in strength and effectiveness? This must be our hope, and to consider whether or not it is a reasonable hope we must see what has been its progress in the past.

The growth of arbitration and judicial settlement during the present generation has been phenomenal. The court at Cartago, the agreement for general arbitration among several of the smaller European nations, as well as the great number of special arbitration treaties which have followed each other in rapid succession among the greater powers, are all happy omens; but it is not so much the making of a treaty, or even the creation of a court, which is significant; it is the actual arbitration and the submission of the contending parties to the decree that determines what the progress of public opinion has really been. Measured by this standard, however, the progress is also great. No question once submitted to arbitration has yet led to war, although the conclusions are sometimes unsatisfactory and repudiated by both parties.

The question of the growth of international public opinion, and how far it can be relied on to enforce the decrees of such an international tribunal, is best illustrated, I think, by the growth of public opinion in our own country in reference to the Federal Supreme Court, which is justly considered the prototype of an international court. The beginnings of our own Supreme Court were modest enough. In its earlier days it was not considered an important factor of the Government, and Chief Justice Jay and Justice Ellsworth are said to have resigned in order to pursue occupations in their own States which they considered more important. The Constitution gave that court jurisdiction in cases between States and the citizens of other States. The Supreme Court held, and held correctly, in Chisholm against Georgia, that this authorized the citizens of one State to sue another State, yet Georgia defied the court and passed a law denouncing the penalty of death against any one attempting to enforce its process. Georgia succeeded in this defiance, for a constitutional amendment was rushed through Congress and ratified by three-fourths of the States, providing that the judicial power of the United States should not be construed to extend to any suit brought against one State by citizens of another.

In like manner Pennsylvania resisted with its State militia the decree of the court in the case of the sloop "Active."

Again, the United States by treaty guaranteed to the Cherokees a certain tract of land in Georgia. That State by law extended its jurisdiction over their territory, and imprisoned the Rev. Mr. Worcester and the Rev. Elizur Butler, with others, for not obtaining a license from the State to live within the Cherokee country. Worcester and Butler appealed to the Supreme Court of the United States, which decided that the law was unconstitutional, and the Georgia court was bidden to reverse its judgment and let the prisoners go free, a mandate which it refused to obey, and Worcester and Butler suffered imprisonment for a year or more before they were pardoned by the Governor of Georgia. In this case the action of the State was also ignored by President Jackson.

In 1859 a man was convicted in Wisconsin for violating the fugitive-slave law. He was liberated by the State court upon *habeas corpus*, the court deciding that the fugitive-slave law was unconstitutional. The Supreme Court of the United States held that it was constitutional, yet the Supreme Court of Wisconsin effectually defied the judgment, and the indicted party was released.

In all these cases public opinion would not enforce the decrees of the Federal tribunal. Moreover, although the Supreme Court had power to adjudicate all

claims and controversies between the States, no one ever appealed to that court to decide the right of secession and the maintenance of the Union, and if an appeal had been made in the burning days when that question was before the country there can be no doubt that such appeal would have been in vain.

Yet that court has constantly grown in power. No State now would question its decrees. So numerous have been its decisions in cases between States, and so universally have they been acquiesced in during recent years, that its authority may be regarded as thoroughly established.

But is this simply on account of the growth in public opinion or is it also because it is believed that whenever necessary the power of the Executive, with the Army and Navy of the United States behind it, will enforce its decrees?

The court has never yet applied to any other authority than public opinion to carry out its decrees against a State, but it may well be that the possibility of other powers in reserve may have helped to form that public opinion itself.

But whatever its cause, public opinion has grown greatly in America in support of the decisions of our Supreme Court, and while we cannot hope that it will grow so readily among nations, where it is now much feebler than with us, nations differing in language, blood, and social usages, and far more diverse than the homogeneous States of the Federal Union, yet if an international court shall act with as much wisdom and justice as has characterized the decisions of our own august tribunal, public opinion will gradually grow in time until the bulk of its decisions shall be respected and enforced.

In order that such a result shall be attained, the court should not be overloaded with too large a jurisdiction at the outset. A decision which is not enforced would greatly weaken its authority. It is far better to lay a good foundation with limited jurisdiction than to build a high and fragile structure to be overthrown by a storm. Therefore the objects of its determination at first ought to be such only as existing public opinion will constrain nations to obey. Nothing should be submitted but "justiciable" controversies (to use the language of our recent proposed treaty with England)—nothing but what a court may properly decide—and in determining this, regard must be had to what courts have already decided. Political questions in general ought not at first to be included.

The thing is to get the court, and then enlarge its jurisdiction as way opens and public opinion becomes ripe. Let us follow the course of nature—"first the blade, then the ear, and after that the full corn in the ear." Indeed, it will hardly be found possible amid the present conflicting views of the various powers to proceed in any other way.

Nor is it at all necessary, nor even desirable, that all the nations should at first co-operate in the formation of this tribunal. It is far better to let it be composed of judges representative of the most enlightened nations only—those who stand at the front, not merely in military prowess, but in elevated standards of public opinion. An international court would not acquire any additional authority if the government of Huerta or Carranza shall have co-operated in its formation. The judge who might owe his appointment to such a source is hardly likely to inspire public confidence. How can the court's decree be sustained by the public opinion of nations where public opinion does not exist, or, if it exist, is of a character to be shunned by the rest of mankind?

It would be far better for no nations to co-operate except those whose own history and institutions give reasonable hope that they will submit to its decrees. A country, for instance, which will not even try to pay its own debts would seem to be a poor field from which to hope for the observance of a judgment directing the payment of money.

President Lowell, of Harvard, in his recent work on "Public Opinion," says that an opinion can be public only when those who do not share it feel constrained by a sense of obligation, and not merely by a fear of superior force, to accept it. If this be true, there are nations that as yet have no public opinion; those nations that will not submit to the decisions of their own people, expressed in lawful elections, can hardly be expected to submit to the decisions of an international tribunal unless compelled to do so by force.

There are in the world today eight great nations which control its destinies, and some, at least, among these will not consent to be subordinated to the larger number of little peoples who can control nothing. An international court cannot begin that way, and it is much better that those eight nations alone, each with an equal voice, should combine and originate the court (together with such other nations as are willing to join contenting themselves with a smaller representation) than that we should await the impossible time when Germany, for instance, shall consent to be outvoted by Honduras and Venezuela. But even if one or more of the leading nations should be unwilling to co-operate, it would be better to go on and establish the court with those which are willing, rather than to fail, since the court, when once established—*if it be composed of sound material*—will of itself be the strongest possible means of educating the public opinion of the world and the strongest possible argument for the further extension of its own jurisdiction over other nations.

The most convincing part of such an argument, however, must be found in the fact that the court, when organized, *actually does justice to the litigants.* If it fail in this, the work will be worse than fruitless; but if at the outset only the most enlightened nations take part in its formation, and if the judges are appointed, as they must be, before the issues arise which they are to decide, there is strong ground to hope that each nation, stimulated by national pride, will select its best representatives for the high place, and that the tribunal may be worthy of the momentous destinies which shall thus be confided to its keeping.

By what other agencies can we develop public opinion which will support the decrees of an international court?

The development of a code of international law (among all nations if possible; if not, then among those who are willing to establish an international court) will be a further bulwark of this better method of adjudicating international controversies.

But each State within its own boundaries (and the duty is especially incumbent upon us in America, as

one of the leaders in this movement)—each State must educate its own people in the creation of a public opinion and in a sense of justice and obedience of law which will promote the success of this great enterprise. This work of education should begin in our schools, and continue through every stage of life, and should be directed far more than it is today to the object of making each man not only a good citizen of the Commonwealth in which he dwells, but also a good citizen of the world, exempt from vulgar prejudices against other races and nationalities—such prejudices, for instance, as load with the contemptuous name of "dago" the citizens of a country whose career has been the most illustrious of all the nations of the world. We must have an education sufficient to remove that unworthy arrogance with which we are only too prone to treat those whose color, whose habits of thought and modes of life are different from our own.

In the teaching of history, too, while we continue to give full credit to the manly virtues, courage, patriotism, fortitude, virtues which war often develops (God forbid that the day should ever come when the name of Washington should not be revered throughout the land, or when our youth should be permitted to grow up unable or unwilling to defend their country in time of need), yet history should no longer be overweighted upon the war side to such a degree as gave rise to the adage, "Blessed is the land without a history." The developments in the life of a people, the great popular movements which peacefully transform the world—these should be given (as indeed they are now, more and more) their proper share in our instruction. More than this, we should exhibit not only the blazonry and glory of war, but its darker side as well, the dreadful suffering it entails, the universal devastation, its disastrous consequences, and the heavy burdens and small results which flow from it, even when successful, so that the coming generation may obtain a just view of the entire prospective and of all the lights and shadows upon the landscape of human life.

But something still more specific should be done to buttress and fortify public opinion in support of the decrees of an international court. The most effective way to do this is for the nations who take part in the organization of such a court mutually to agree by treaty that they will guarantee that its decrees shall be enforced. Of course there will be nothing but international public opinion behind the agreement, but public opinion is generally much stronger in favor of the fulfillment of an explicit promise than it is in favor of the fulfillment even of a moral obligation when no such promise exists. It will be more generally considered a matter of shame and dishonor for a nation not to perform that which it has solemnly agreed to do. As Henry Vivian said in the late conference at Mohonk, "I think international contracts or treaties are of vital importance in crystallizing public opinion around certain standards of international conduct. On the question of neutrality of the Great Lakes, for example, Dr. Callahan tells us, in his book on the subject, that often during the hundred years people on both sides were giving vent to passion and calling upon the United States or ourselves to break from that neutrality and put gunboats on the lakes. But statesmen were able to say, 'There is an agreement between us,' and that settled the question, and the passion died down." Let there be an agreement between the nations that the decrees of the international court shall be sustained, and the world may ultimately find in the public opinion behind that agreement as reliable a sanction as that which enforces against the States of the Federal Union the judgment of our own Supreme Court.

The Friendly Composition of International Disputes.*

By Arthur Deerin Call.

There is probably no plea more familiar to the pacifist than the plea for arbitration. Mr. Choate and others have wisely pointed out that in the first Hague Conference we find nations unanimously agreeing that respect for law, rather than for mere compromise and diplomacy, should be the essential in international arbitrations. And yet arbitration as a means of settling controversies is frequently and seriously criticised on the ground that it is most liable to be modified into a mere compromise. The criticism comes not from laymen, but from statesmen directly responsible for their governments. The question raised in this paper is, therefore, Can arbitration be relieved, at least in a measure, from this criticism? If it cannot then arbitration as a means of settling disputes, especially international disputes, may well be questioned.

The two factors in the settlement of a controversy of any kind, the ascertaining of the facts and the prescription of the remedies, may be considered in two ways—first, in a broad or general sense, relating the consideration variously to questions of fact, of law, of policies; or, secondly, they may be treated specifically in their legal aspects only. For example, "Direct Negotiation" is not over discriminating—that is, it treats the political and the legal together. It makes little attempt at analysis. It may, and often does, survey the whole international field. "Good Offices," with its counsel or advice, may be, and usually is, little concerned with the fine distinctions of law. "Mediation," where the third party participates as mediator, is also of this general type, the mediator being usually little concerned in separating fact, law, and policy.

"Friendly Composition," the main principle of which is that the matter in dispute shall be referred to a public or private person or commission for decision upon the basis of fair-minded judgment, conscience, equity, is also generic. As a means of settling international disputes, it is not so much concerned with the strict rules of law as it is in settling the dispute fairly and equitably. This does not mean that the friendly composer may not decide the question in strict conformity with the rules of law, but that such a decision may be satisfactorily rendered without any reference to such rules.

It has been found that the method of friendly composition is possible not only in minor cases, but in major cases as well. The Alsop case, a major case involving a dispute between the United States and Chile for over thirty years, was, for example, decided directly in ac-

*Read before the American Society for the Judicial Settlement of International Disputes, December 6, 1913.